



*Louisiana*

# STUDENT RIGHTS REVIEW

Answers to Common Questions about  
RELIGIOUS FREEDOM IN SCHOOLS

**LOUISIANA STUDENT RIGHTS REVIEW:**

***Answers to Common Questions about Religious Freedom in Schools***

This document provides general guidance and is not to be used for legal advice. Because the law is constantly changing and each factual situation is unique, the authors, publishers and distributors of this document do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in this document have not been subject to change, amendment, reversal, or revision. If you have a legal question or need legal advice, please contact an attorney.

## *Introduction*

For almost a century, the United States Supreme Court has repeatedly affirmed that neither students nor teachers “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>1</sup> Yet, there remains widespread confusion across our nation, and here in Louisiana, regarding the practical application of those rights in public schools.

The right to religious expression, in particular, has been increasingly challenged and misunderstood in recent years, and many people have been led to believe our elementary and secondary schools must be “religion-free” zones. To the contrary, both federal and state laws specifically protect religious freedom rights in public schools. Thankfully, Congress and our state legislature still recognize the fundamental importance of religious liberty—the first freedom listed in the Constitution’s Bill of Rights.

This *Louisiana Student Rights Review* answers some of the most frequently asked questions and misconceptions about the law in this area. Our hope is that this publication will be: a helpful resource for Louisiana students, parents, teachers, coaches, administrators and school board members; a tool in avoiding campus controversies; and a positive reminder that when the government acknowledges “[w]e are a religious people whose institutions presuppose a Supreme Being... it follows the best of our traditions.”<sup>2</sup>

If our offices can provide further assistance on these or any other matters, please let us know.



A handwritten signature in black ink that reads "Jeff Landry".

Jeff Landry  
Attorney General



A handwritten signature in black ink that reads "MIKE JOHNSON".

Mike Johnson  
Congressman

*As Americans*, we cherish our freedoms. The Declaration of Independence proclaims that “all men are created equal, that they are endowed by their Creator with certain unalienable rights,” and the First Amendment to the U.S. Constitution protects these liberties by providing, in part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.” Students maintain their rights while on campus because, as the U.S. Supreme Court has long acknowledged, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”<sup>3</sup>

Although the government is prohibited from sponsoring religious activities in schools, the Constitution fully protects the free speech and religious expression of students. Courts have determined there is an important distinction between *government* speech attributed to a school district or its employees and the *private* speech of students. Unlike the government, students may share and promote their religious beliefs and freely live out their faith.



## PART I

### *Student Rights to Religious Expression*

Public schools are required to reasonably accommodate the religious beliefs and practices of students, and school officials are prohibited from showing any degree of hostility toward religious viewpoints. Instead, the law requires a school district to remain neutral with regard to religion.<sup>4</sup> This means public schools may not single out religious speech or religious conduct for censorship or discriminatory treatment.

**Q:** *What are the general guidelines for student religious speech?*

**A:** Because religious speech must be treated just as all other speech, students are free to pray, discuss their faith, read the Bible or other religious texts, and invite others to share and participate in such activities. To be protected by law, the religious expression must be student-led, student-initiated and voluntary. School officials

may not prohibit student expression during non-instructional time unless it (a) materially and substantially interferes with the operation of the school, or (b) infringes on the rights of other students.<sup>5</sup> A school may not prohibit student expression solely because others might find it offensive.<sup>6</sup>

**Q:** *Can students discuss and share their faith with fellow students?*

**A:** When a school allows students to talk with one another during non-instructional time, students are free to discuss religious topics and to share their faith with others.<sup>7</sup>

**Q:** *Can students express their religious beliefs in classroom discussions and school assignments?*

**A:** Yes. When a student's expression of his or her religious beliefs is relevant to the subject matter and meets the standards of the assignment, a school may not prohibit such expression without a legitimate educational purpose for doing so.<sup>8</sup>

**Q:** *Do students have a right to engage in religious expression during a class talent show or other school-organized event?*

**A:** Yes. When the choice of what to say or perform is voluntary and up to the student alone, the student's expression is personal and thus protected by the First Amendment.<sup>9</sup>

**Q:** *Can students read and/or distribute religious materials at school?*

**A:** Yes. Students are able to do so during non-instructional time<sup>10</sup> because schools are not allowed to treat religious materials any differently than non-religious materials.<sup>11</sup>

**Q:** *Can students advertise their religious activities at school?*

**A:** Yes. Students are allowed to promote religious events and activities on the same basis as all non-religious student activities.<sup>12</sup>

**Q:** *Can students pray at school?*

**A:** Yes. Because prayer is private speech, students are allowed to pray at school during non-instructional time so long as the prayers are not disruptive or appear to be endorsed by the school or school officials.<sup>13</sup>

**Q:** *If school officials are not involved, do students have a right to pray—either individually or as a group—at a school athletic competition, assembly or other extracurricular activity?*

**A:** Yes. The U.S. Supreme Court has held “nothing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the school day.”<sup>14</sup> As a result, when there is no involvement of the school or its employees, students are allowed to pray to the same extent that other speech is allowed. So long as a student is engaging in speech that is clearly his or her own and not the speech of the school, that student's private expression is protected by law.<sup>15</sup> A number of factors may be relevant in determining whether a prayer is private student speech or impermissibly endorsed by the school. For example: if a school allows for the free speech of students in welcoming remarks and does not in any way control the content of the speech or enforce a policy that either encourages or discourages religious speech, a student-initiated prayer should be constitutional.

**Q:** *Can students pray during lunch, school recess, or other designated free time?*

**A:** Yes. Schools must allow prayer to the same extent they allow other non-religious speech or expression during non-instructional time.<sup>16</sup>

**Q:** *Can students pray at their school graduation?*

**A:** The answer depends upon whether an objective person would see it as a government endorsement of prayer in public schools.<sup>17</sup> The U.S. Supreme Court has outlined a set of factors that would keep student prayer at such events from running afoul of the law. Such a prayer should be permissible if: (a) the school allows a time at graduation for a student to share a message of his or her own choosing; (b) neutral criteria determines which student is allowed to speak during this time; (c) there is no involvement or prior review of the speaker's message by the school officials or staff; and (d) students are instructed that their speech may not materially and substantially interfere with the graduation ceremony, or be vulgar, lewd or obscene.<sup>18</sup>

**Q:** *Can students wear religious clothing, symbols or jewelry to school?*

**A:** Yes. Clothing or jewelry that represents a religious message is considered to be an exercise of private speech. Because schools are prohibited from discriminating against religious expression or messaging, a school may not regulate religious items or clothing any differently than it does other student clothing.<sup>19</sup>

**Q:** *Can a public school still recognize Christmas and Easter?*

**A:** Yes. A public school can refer to "Christmas" and "Easter," have a Christmas/Easter party, and include Christmas/Easter music, art, or drama in a school play or performance, if the intent is to recognize a legal public holiday and teach history or cultural heritage. The purpose may not be to advance a particular religion.<sup>20</sup>

**Q:** *Can students leave campus during the school day to participate in religious instructional activities?*

**A:** Yes. Courts have long held that schools may allow students to leave campus for "released time" to attend private, voluntary religious activities and programs.<sup>21</sup>

**Q:** *Can the Bible and other religious texts be used appropriately in a public school classroom?*

**A:** Yes. More than a half century ago, the U.S. Supreme Court clarified that "the Bible is worthy of study for its literary and historic qualities," and "such study of the Bible or of religion, when presented objectively as part of a secular program of education" is perfectly lawful when relevant and appropriate to the subject matter of a class.<sup>22</sup>





## PART II

### *Rights of Religious Student Organizations*

The First Amendment and other federal and state laws, such as the federal Equal Access Act, protect the rights of students to participate in religious clubs and organizations on the same basis as every other non-curriculum related student organization.<sup>23</sup> Once a school recognizes a single non-curriculum related club, it triggers the Equal Access Act and entitles all other qualified student clubs to the same recognition, privileges, and access to school facilities.<sup>24</sup> School officials are not permitted to exclude or discriminate against any student organization based upon its religious viewpoints or practices.<sup>25</sup>

**Q:** *Can religious clubs meet on school grounds?*

**A:** Yes. A school must treat every recognized non-curriculum related student organization equally. If any student club is allowed to hold voluntary meetings during non-instructional time and on school grounds, religious clubs must be allowed to do the same.<sup>26</sup>

**Q:** *How may a religious club promote its meetings and activities?*

**A:** Religious clubs must be permitted to advertise their meetings and events in the same ways as all other student clubs. For example, if any student organization is allowed to advertise its upcoming events on a school billboard, digital display, or morning announcement, then religious student organizations must be given those same opportunities.<sup>27</sup>



**Q: *Can religious clubs access and use school equipment?***

**A:** Yes. Religious clubs must be allowed the same access to school equipment and facilities as all other student clubs.<sup>28</sup>

**Q: *Can schools fund religious clubs?***

**A:** Yes. Religious clubs must be allowed the same access to school funding as all other student clubs.<sup>29</sup> For example, if student fees are collected for a school's general fund and any student organization is allowed a share of those funds, religious student organizations must be allowed the same share.

**Q: *Can religious clubs have specific qualifications for membership or codes of conduct?***

**A:** Yes. Religious clubs have a constitutional right to select members and leaders who share their beliefs and agree to abide by codes of conduct based on those beliefs.<sup>30</sup>

**Q: *Who can be a leader of a religious club?***

**A:** A religious club's freedom of association includes the right to choose its leaders based upon the club's chosen criteria.<sup>31</sup> For example, a Christian club is within its right to require any leader to adhere to its statement of faith and beliefs. Also, because religious clubs must be student-led, schools must allow these choices to be decided by the club members.<sup>32</sup>

**Q: *What should a religious club do if a school refuses to recognize it as a student club?***

**A:** If a school refuses to recognize a religious club or provide it the same access and privileges that are given to non-religious clubs, the students and their parents should meet with the school officials to discuss and resolve the matter. If the matter is not resolved, the students and their parents should seek the assistance of their local elected officials or the Office of the Louisiana Attorney General.

## PART III

### *Organization Involvement & Teacher Rights*

Students who participate in religious clubs may engage in free speech and the free exercise of their religion thanks to the protections provided by the First Amendment and other federal and state laws, such as the federal Equal Access Act. Because the law requires these clubs to be student-led and student-initiated, courts have held that the role of faculty sponsors and other supervising adults must be limited so that club activities remain the private religious expression of students and not the expression of a government-funded school. If student clubs wish to allow school faculty and staff to play a larger role in their activities, they may choose to operate as a community group rather than a recognized student organization. However, community groups do not have the same rights of access to benefits such as school funding and meeting on campus during a school activity period.

**Q:** *Can school employees actively lead and participate in a meeting of a recognized student religious club?*

**A:** The law requires school officials and employees to attend religious meetings only in a non-participatory capacity.<sup>33</sup> However, if a club is organized as an after-school community group not affiliated with the school, then adults may be members.<sup>34</sup>

**Q:** *What can be discussed during a religious club's meetings?*

**A:** When meetings take place during non-instructional time and the school does not control the content, students may pray, sing, read and study the Bible or other religious texts, share testimonials, and/or engage in similar activities as they see fit.<sup>35</sup>

**Q:** *Are outside speakers allowed to participate in religious club meetings?*

**A:** Yes. Religious clubs may invite speakers and reserve school space in accordance with the same

school policies that are applicable to all other clubs. It is unconstitutional for a school to exclude a student club's guest speaker simply on the basis of the speaker's religious beliefs.<sup>36</sup>

**Q:** *Can teachers have a prayer group?*

**A:** School employees may meet together for prayer or Bible study during non-instructional time (before school, at lunch, etc.) to the same extent they may engage in non-religious discussion and activities.<sup>37</sup>

**Q:** *Are school employees allowed to discuss religion with students?*

**A:** Because schools must remain neutral on religious matters during instructional time, faculty and staff are only able to discuss religion when it is relevant and appropriate to a classroom topic or the secular program of education. However, outside of school, school employees are permitted to exercise their own freedom of speech and religious expression and may discuss religion with students to the same extent they may discuss any other topic.<sup>38</sup>



## *Endnotes*

1. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (The Court noted at the time, “This has been the unmistakable holding of this Court for almost 50 years.”); *See also, Morgan v. Swanson*, 659 F.3d 359 (5<sup>th</sup> Cir. 2011) (en banc).
2. *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952).
3. *Tinker*, 393 U.S. at 512 (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).
4. *Everson v. Board of Educ.*, 330 U.S. 1, 18 (1947) (The First Amendment “requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.”); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001).
5. *Tinker*, 393 U.S. at 509, 511.
6. *Morse v. Frederick*, 127 S. Ct. 2618, 2629 (2007) (finding an “offensiveness” standard may not be used to regulate student speech because “much political and religious speech might be perceived as offensive to some”).
7. *Morgan*, 659 F.3d at 412 (“[W]hat one child says to another child is within the protection of the First Amendment.”).
8. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988).
9. *O.T. ex rel. Turton v. Frenchtown Elementary Sch. Dist. Bd of Educ.*, 465 F. Supp. 2d 369, 381 (D.N.J. 2006) (finding that a school’s “refusal to allow [a second grade student] to perform the song “Awesome God” at the Frenchtown Elementary School talent show amounted to unlawful viewpoint discrimination”).

10. *Good News Club*, 533 U.S. at 112; *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993); *Wright v. Pulaski Cnty. Special Sch. Dist.*, 803 F. Supp. 2d 980, 983 (E.D. Ark. 2011) (“[T]he prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.” (quotation omitted)).
11. *Id.*
12. *Good News Club*, 533 U.S. at 112; *Wright*, 803 F. Supp. 2d at 983.
13. *See Adler v. Duval Cnty. Sch. Bd.*, 206 F.3d 1070, 1082 (11th Cir. 2000); *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963, 969 (5th Cir. 1992); *Chandler v. Siegelman*, 230 F.3d 1313, 1317 (11th Cir. 2000).
14. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000) (holding that although it is unconstitutional for the government to “affirmatively sponsor[] the particular religious practice of prayer,” the Constitution protects the right of students to engage in voluntary prayer). *See also Chandler v. Siegelman*, 230 F.3d 1313, 1317 (11th Cir. 2000).
15. *Chandler*, 230 F.3d at 1316 (“The Free Exercise Clause does not permit the State to confine religious speech to whispers or banish it to broom closets. If it did, the exercise of one’s religion would not be free at all”).
16. *Santa Fe Indep. Sch. Dist.*, 530 U.S. at 313 (holding that although it is unconstitutional for the government to “affirmatively sponsor[] the particular religious practice of prayer” that the Constitution protects the right of students to engage in voluntary prayer). *See also Chandler*, 230 F.3d at 1317.
17. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000).
18. *Tinker*, 393 U.S. at 509; *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 686 (1986). For an example of a constitutional graduation policy, *see Adler v. Duval Cnty. Sch. Bd.*, 206 F.3d 1330 (11<sup>th</sup> Cir. 2001). *But see Cole v. Niemeyer*, 228 F.3d 1092 (9th Cir. 2000) (the Ninth Circuit held that allowing a sectarian prayer and message at graduation would violate the Establishment Clause).
19. *Tinker*, 393 U.S. at 509; *Jacobs v. Clark Cnty. Sch. Dist.*, 373 F. Supp. 2d 1162, 1172-73 (D. Nev. 2005) (ruling that “shirts bearing religious messages” qualify as “speech within the ambit of First Amendment protection”); *Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F. Supp. 659, 665-66 (S.D. Tex. 1997) (finding that a Rosary is “akin to pure speech” and “a form of religious expression protected under the First Amendment”).
20. *Zorach v. Clauson*, 343 U.S. 306 (1952).
21. *Stratechuk v. Bd. of Educ.*, 587 F.3d 597, 610 (3rd Cir. 2009).
22. *Abington School Dist. v. Schempp*, 374 U.S. 203 (1963).
23. 20 U.S.C. § 4071.
24. *Bd. Of Educ. Of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 238 (1990) (“[T]he purpose of granting equal access is to prohibit discrimination between religious or political clubs on the one hand and other non-curriculum related student groups on the other....”).

25. 20 U.S.C. § 4071(b). The Act defines a “limited open forum” as existing in a public secondary school “whenever such school grants an offering to or opportunity for one or more noncurriculum-related student groups to meet on school premises during noninstructional time.”
26. *Id.*
27. *Prince v. Jacoby*, 303 F.3d 1074, 1092 (9<sup>th</sup> Cir. 2002) (“The School District’s restriction on access to facilities is based purely on the World Changer’s religious viewpoint in violation of the First Amendment.”).
28. *Mergens*, 496 U.S. at 247; *Prince*, 303 F.3d at 1086-87, 1092.
29. See *Prince*, 303 F.3d at 1094 (withholding official recognition from a legitimate student club was discriminatory in that it denied equal access to school funds and charged the club to participate in school fundraising activities based on the group’s Christian viewpoint).
30. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000) (“The forced inclusion of an unwanted person in a group infringes the group’s freedom of expressive association if the presence of that person affects in a significant way the group’s ability to advocate public or private viewpoints.”); *Hsu v. Roslyn Union Free Sch. Dist. No. 3*, 85 F.3d 839 (2d Cir. 1996) (school district violated Equal Access Act, an analog to the First Amendment, when it conditioned a Christian student organization’s access to a free speech forum on its willingness to abandon a requirement that its leaders share its Christian beliefs); *Christian Legal Soc’y v. Walker*, 453 F.3d 853 (7th Cir. 2006) (concluding a university violated the First Amendment when it conditioned access to a free speech forum on a Christian student organization’s willingness to abandon its faith-based membership and leadership restrictions).
31. 20 U.S.C. § 4071(c)(1)-(3); *Hosanna-Tabor Evangelical Lutheran Church & Sch. V. Equal Emp’t. Opp. Comm’n*, 132 S.Ct. 694, 698 (2012).
32. See *Mergens*, 496 U.S. at 251 (noting that any fear of mistaken inference of endorsement by school officials is “largely self-imposed, because the school itself has control over any impressions it gives students.”); see also *Widmar*, 454 U.S. at 274, n.14.
33. 20 U.S.C. § 4071(c)(3).
34. *Wigg v. Sioux Falls Sch. Dist.* 49-5, 382 F.3d 807, 812-815 (8th Cir. 2004) (concluding that an elementary school teacher had the right to “participat[e] in [an] after-school [religious] Club” because this activity “constitute[d] private speech”).
35. 20 U.S.C. § 4071(c)(4); see also *Tinker*, 393 U.S. at 509.
36. *Wigg*, 382 F.3d at 813 (citing *Rosenberger v. Rectors & Visitors of Univ. of Va.*, 515 U.S. 819, 829 1995)).
37. “Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools,” U.S. Department of Education- [http://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html).
38. *Wigg*, 382 F.3d at 812.

# 12 Important Facts about Religious Expression in Public Schools

---



1. First Amendment rights are not surrendered at the school house door.
2. Schools cannot treat religious speech or activities differently than other activities.
3. Students are free to discuss religion, pray, and read the Bible at school during non-instructional time.
4. Students can freely share their faith with others and distribute religious materials on the same basis as non-religious materials.
5. Students can incorporate their religious beliefs in the classroom when relevant to the assignment or classroom discussion.
6. Students can participate in religious clubs on the same basis as other clubs.
7. Religious student clubs must be allowed the same privileges, access, and funding opportunities as other non-curriculum related student clubs.
8. Religious clubs are allowed to promote meetings and events on the same basis as non-religious clubs.
9. School officials may attend but not actively participate in or lead meetings of a religious student club.
10. Students are allowed to pray at school assemblies and athletic events when school officials are not involved.
11. Truly student-led, student-initiated prayers and private religious expression must be allowed at graduation ceremonies, and students may include religious content in their speeches.
12. Schools can openly acknowledge religion and its impact upon our history and civilization.



**For more information on these topics, see also:**

*“Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools,” U.S. Dept. of Education*  
[http://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)



## UNITED STATES CONSTITUTION, Amendment I

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*



## LOUISIANA CONSTITUTION OF 1974, Article I, Section 8

*No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.*



*Louisiana*

STUDENT RIGHTS REVIEW